***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

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WRIT PETITION No. 23272 OF 2002

% 12-06-2007

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K.Kumara Swamy S/o.Venkataiah

…Petitioner

And

$ The Cooperative Tribunal, Vijayawada & others

…Respondents

! COUNSEL FOR PETITIONER: Ms. Usha Kiran

^ COUNSEL FOR RESPONDENTS: Sri G.Vivekanand

< Gist:

> Head Note:

? CITATIONS:

-Nil-

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 23272 OF 2002

Dated 12th June 2006

Between:

K.Kumara Swamy S/o.Venkataiah

…Petitioner

and

The Cooperative Tribunal, Vijayawada & others

…Respndents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 23272 OF 2002

O R D E R:

The petitioner challenges the award dated 4.12.1999, passed by the Sub-Registrar, attached to the Girijan Co-operative Corporation, Visakhapatnam, in A.R.C.No.9/98-99, as confirmed by the Cooperative Tribunal, at Vijayawada, through its order dated 20.8.2002 in O.A.No.164 of 2001.

The petitioner is employed as Divisional Manager in Girijan Cooperative Corporation (for short "the Corporation"). During the year 1998, he was posted as Divisional Manager of Girijan Primary Cooperative Marketing Society Ltd., Parvathipuram, (for short "the Society"), which is under the direct control and management of the Corporation. The society filed A.R.C.No.9/98-99, before the Deputy Registrar, under Section 62 of the A.P. Cooperative Societies Act (for short "the Act"), for recovery of a sum of Rs.80,929-85 ps., with interest at 24%, against an employee, by name A.Narayana Rao. It was alleged that the said Narayana Rao, who was in-charge of the purchase of various materials, did not account for the sum, indicated above. The Deputy Registrar issued a notice to the sole defendant in

the proceedings, i.e. Narayana Rao. A detailed order was passed, in which he discussed the contentions of the respective parties. However, in the operative portion of the award, dated 4.12.1999, he observed that the petitioner, one S.Gupteswar Rao, Assistant Manager, and Sri J.Satyanarayana Murthy, Senior Accountant, are jointly and severally liable, along with Mr.A.Narayana Rao, for a sum of Rs.90,000/-.

The petitioner preferred an appeal before the Tribunal, alleging that he was neither a party to the arbitration proceedings, nor was he issued notice of any allegations. The Tribunal dismissed the appeal and upheld the award against the petitioner also. Hence, this writ petition.

Ms.Usha Kiran, learned counsel for the petitioner, submits that the award passed by the Deputy Registrar, and the judgment rendered by the Tribunal, are not only perverse and illegal, but are contrary to the very basic tenets of adjudication. She contends that when the proceedings were initiated against only one individual, there was absolutely no basis for holding that the petitioner was also liable, that too, without hearing him.

Learned counsel for the respondents, on the other hand, submits that the liability against the petitioner was fixed, on the basis of the material available on record, and even now, the petitioner is not able to disprove the same.

The proceedings initiated before an authority, under Section 61 of the Act, are equivalent to suits. The parties are to be described as plaintiff and defendant. All principles of law, including those of limitation, apply to such proceedings. The cause title in ARC.No.9/98-

99 reads as under:

A.R.C.No.9/98-99

"Between:

The Manager,
Girijan Primary Cooperative Marketing Society,
Parvathipuram, Vizianagaram District.

…Plaintiff

AND

Sri A.Narayana Rao CCPA,
Yendabhadra, Komarada Mandal,
G.P.C.M. Society, Parvathipuram, Vizianagaram District.

…Defendant"

The petitioner did not figure as a party. In case, any cause of action arose against the petitioner also, during the course of trial of the ARC, it was open to the plaintiff therein, to implead the petitioner. Such an eventuality did not take place. By the time the case was disposed of, the claim stood as under:

> "This claim preferred by the Manager, G.P.C.M. Society, Parvathipuram against Sri A.Narayana Rao, CCPA, Yendabhadra of GPCM Society, Parvathipuram for Rs.80,929.85 with 24% interest from 30.5.1998 to the date of realization and A.R. Costs which filed under Section 61 of the APCS Act 7 of 1964."

After undertaking elaborate discussion on merits, the Deputy Registrar summed up the conclusion as under:

> "After careful examination of the available recorded evidences and documents, the Godown Sr.Stores Assistant Sri K.Nageswara Rao, the Divisional Manager Sri K.Kumaraswamy, the Society Manager Sri S.Gupteswar Rao, the Sr.Accountant Sri J.Satyanarayana and the defendant Sri A.Narayana Rao, CCPA, are jointly and severally held responsible for disputed deseeded tamarind stocks value Rs.90,000/-."

On the face of this, the conclusion is without any basis. Except that the petitioner figured as a Divisional Manager, there was neither any allegation against him by any one, nor was the petitioner made a party. The ARC was in the form of suit for recovery of amount. It is ununderstandable as to how the Deputy Registrar passed a decree against a person, who is not a party before him. The only manner in which the petitioner participated in the proceedings, appears to be that, he deposed as a witness on behalf of the plaintiff, to substantiate the suit claim, against the sole defendant. When the plaintiff did not make any claim against the petitioner herein, and on the other hand, cited him as witness to prove the claim against the sole defendant, it is rather shocking that the Deputy Registrar had donned the mantle of an unseen plaintiff, against the petitioner.

Feeling naturally aggrieved by the award passed by the Deputy Registrar, the petitioner filed O.A.No.164 of 2001, before the Cooperative Tribunal at Vijayawada. The Tribunal, which is headed by a Judicial Officer of the rank of District Judge, however, had adopted a wonderful logic. The fact that the petitioner figured as a witness, was treated as a justification for passing award against him. About the complaint of the petitioner that he was not given an opportunity, the Tribunal has observed as under:

> "His contention that he was not given opportunity is not at all correct as his deposition was recorded in detail by the 2nd respondent. His objection though not separate, is in the form of deposition. This deposition itself is considered to be an objection of the appellant. In such a case it cannot be said that he was not given opportunity by the lower authority as per law."

There cannot be any better instance of travesty of justice, than this. When it was pointed out that the petitioner was not a party to the

proceedings before the Deputy Registrar, the Tribunal dismissed the objection, with an observation as under:

> "His other contention was that he was not a party to the proceedings. The arbitrator should have shown him as respondent in the arbitration proceedings. But according to us, this is only a simple mistake or simple irregularity but not an illegality, as the 2nd respondent/arbitrator enquired all the concerned including the appellant for the loss caused to the respondent society. Further, the award is passed not only against the appellant but also against the others concerned i.e., the Senior Stores Assistant K.Nageswara Rao, Sri Gupteswara Rao Manager, and Sri A.Narayana Rao, CCPA. Moreover, the arbitrator has scrutinized all the evidences of all the witnesses concerned to the arbitration proceedings including that of the appellant and other delinquent employees who were also accountable on par with the appellant. In such a case, the appellant cannot escape as if he is not concerned simply because his name was not shown as respondent in the arbitration as the arbitrator is only lowest officer in the department i.e, Cooperative Sub-Registrar who might not know the legal flaws and inflaws."

This court is compelled to observe that while the flaw on the part of the Deputy Registrar was attributable to lack of knowledge in the intricacies of adjudication of matters, the Presiding Officer and the other Members of the Tribunal did not prove to be any better. The whole episode discloses that basic principles of adjudication were left to winds, and personal whims and fancies have over-shadowed the requirements under law. When the plaintiff in the proceedings did not have any claim or grievance of the writ petition, it is just inconceivable, as to how the adjudicators are chosen to enlarge the scope of adjudication, giving a go-bye to the settled principles of law.

For the foregoing reasons, the writ petition is allowed, and the orders impugned in the writ petition, are set aside. There shall be no order as to costs.

12th June 2007

L.R.copies be marked.
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